

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Application of JOHN MALKOVICH
for an Order Pursuant to 28 U.S.C. § 1782
to Conduct Discovery for Use in
a Foreign Proceeding

**DECLARATION OF JOHN MALKOVICH IN
SUPPORT OF A MOTION TO TAKE DISCOVERY
PURSUANT TO 28 U.S.C. § 1782**

Pursuant to 28 U.S.C. § 1746, I, JOHN MALKOVICH, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a United States citizen and a resident of Cambridge, Massachusetts. I previously lived in France for approximately 10 years and I am fluent in the French language. I am also a public figure, having appeared in more than 70 motion pictures, including *Places in the Heart*, *In the Line of Fire*, *Dangerous Liaisons*, *Empire of the Sun*, *Con Air*, *Of Mice and Men*, *Being John Malkovich*, *Burn after Reading*, and *RED*. I submit this declaration in support of a motion for an order to obtain discovery for use in a foreign tribunal pursuant to 28 U.S.C. § 1782.

2. As more fully described in the declaration of Mr. Hervé Temime, I am a claimant in two related criminal proceedings in France against three employees of *Le Monde* (the “Le Monde Defendants”). These proceedings concern statements about me that appeared in articles from February 8, 2015 and February 10, 2015, and which I allege to be defamatory.

3. At the center of these proceedings are the evidentiary bases, if any, for the Le Monde Defendants' allegations that I had a bank account with HSBC Private Bank in Switzerland ("HSBC") for the purpose of evading taxes. As explained below, the articles indicate that prior to their publication, the Le Monde Defendants cooperated with CBS News, Inc. ("CBS")'s *60 Minutes* on an investigation into the veracity of the statements that appear in them.

4. I have never had an account with HSBC, much less sought to use such an account to avoid the payment of income taxes. My only connection to HSBC, if it can even be called that, is that I maintained an account with Republic National Bank of New York (Suisse) S.A. between 1996 and 1999. There was nothing secret about this account, which was in my own name and used my business manager's address, and I dutifully paid any taxes associated with it.

5. I closed the Republic National account on December 12, 1999, transferring the entire balance to an account I had with Chase Manhattan Bank in New York. HSBC purchased Republic National Bank on December 31, 1999, which is approximately two and a half weeks after the account was closed.

6. I brought this application for the purpose of obtaining deposition testimony of a representative of CBS concerning the information that I provided to them in connection with their investigation of the statements made in the *Le Monde* articles. Specifically, I seek discovery for two limited purposes: (1) to confirm the content of the information I made available to a representative of CBS, including what I said in two phone calls; and (2) to determine if prior to the publication of the articles at issue, CBS conveyed to the Le Monde Defendants the information I provided to CBS.

My Communications with Ira Rosen of 60 Minutes

7. On October 23, 2014, Ira Rosen, a producer with *60 Minutes*, contacted a press agent who has represented me in the past about the allegations that were eventually included in the *Le Monde* articles. Over the next day or so, my business manager and my accountant responded to the press agent and confirmed that I never had an account with HSBC. They informed her that the only account I ever had with a Swiss bank, a brokerage account on which any taxes were paid, was closed in 1999. This was done for the purpose of her passing this information along to Mr. Rosen and CBS.

8. I also spoke with Mr. Rosen on two to three occasions so that I could personally address his inquiries. Mr. Rosen stated that there were two HSBC accounts listed in my name, neither of which contained any funds. I informed Mr. Rosen that I was not engaged in tax evasion and, to my knowledge, I never had a bank account with HSBC. I speculated that my name could have appeared in HSBC's files because of my investments with the convicted fraudster, Bernie Madoff. I mentioned to Mr. Rosen that Mr. Madoff may have had such bank accounts, but I never did.

9. In the last of these conversations, which occurred on or around November 2, 2014, Mr. Rosen stated that my name would not be mentioned in *60 Minutes*' story about the HSBC scandal. At that point, I was under the impression that Mr. Rosen was satisfied both that I did not have a HSBC account and that I did not engage in tax evasion. I mistakenly believed this would end the matter, and I was not contacted by anyone else associated with CBS or *Le Monde* before the publication of the articles at issue.

The Le Monde Defendants Make Certain False Claims

10. On February 8, 2015, *Le Monde* published on its website an article entitled “‘Swissleaks’: the Backstory of a Worldwide Investigation” in substantively identical English and French versions. True and correct copies of the articles are attached hereto as Exhibits 1 and 2. The same day as its publication, *Le Monde* marketed the story through Twitter, stating, as I have translated from the French, “#SwissLeaks: from Gad Elmaleh to John Malkovich, many celebrities are embarrassed.” Attached hereto as Exhibit 3 is a true and correct copy of the Twitter posting, which included a link to the article.

11. The article was written by three journalists, including Fabrice Lhomme and Gérard Davet, two of the Le Monde Defendants. The article claims the Le Monde Defendants spearheaded an “investigation that is spectacular and unprecedented in size.” Specifically, “[a] team of journalists in Paris, Washington, Geneva and 46 other countries has uncovered the hidden workings of a giant tax evasion scheme conducted with the knowledge, and indeed the encouragement, of the world’s second largest bank, HSBC, via its Swiss subsidiary, HSBC Private Bank.”

12. The article includes the names of only three persons, one of whom is me, as set forth in the next paragraph, which describes the purported findings of the Le Monde Defendants’ investigation:

Le Monde has been investigating the HSBC affair since the outset, and in early 2014 came into possession of international banking data for the period 2005-07 that provided evidence of fraud on a gigantic scale. We shared this information with some 60 other news outlets around the world, coordinated by the ICIJ, the International Consortium of Investigative Journalists. The publication of these figures is likely to prove embarrassing for a good number of celebrities, including the French comedian Gad Elmaleh, King Mohamed VI of Morocco and the American actor John Malkovich, but it will shake the international financial industry to the core.

13. The apparent thesis of the article is that Le Monde Defendants have evidence, which demonstrates that certain individuals, including me, engaged in criminal tax evasion.

The authors seemingly underscore this point later in the article, when they write:

Who features on these lists that the French Treasury sent to several foreign administrations, and whose names we shall publish if we consider it to be in the public interest? Arms traffickers and drug smugglers, funders of terrorist organisations, politicians, celebrities, sporting idols and captains of industry, most of them keen to hide their money in Switzerland. It was perfectly illegal for the French clients and for many others to do this. The holders of the accounts are striking in their variety: French surgeons wishing to launder undeclared fees rub shoulders with the protagonists of the Elf affair, Belgian diamond traders, Al-Qaeda funders and a large number of Jewish families who had sent their assets to Switzerland for safekeeping as the Nazis took control of Europe.

14. According to the article, the Le Monde Defendants received a mass of data from a computer analyst and former HSBC employee, Hervé Falciani, for the period of 2005 to 2007. They, in collaboration with the International Consortium of Investigative Journalists and media organizations from around the world, including *60 Minutes*, extensively analyzed the data. The purpose of this analysis was supposedly “to ensure that it would be treated as completely and accurately as possible.”

15. Before the Le Monde Defendants published the results of their findings, they and their collaborators (including *60 Minutes*) also “had to call up every single person mentioned in the articles, whether that person was in Paris or Bamako”. Exhibit 1. The purpose of these phone calls was seemingly to confirm the accuracy of the information reported in the article. Yet I never received a call from anyone at *Le Monde*, and the information I provided to CBS does not appear to have been taken into account by the Le Monde Defendants.

16. On February 10, 2015, a French language article was published in *Le Monde*'s print edition and entitled, as I have translated, "Actors, Athletes, Doctors, Lawyers, Heads of Corporations . . . the Swiss Accounts Reveal a Financial Strategy Carried Out by Highly Paid Professionals." In a box next to the article entitled "THE ELITE OF THE EVADERS" there is a statement in French indicating that "Malkovich said he had no knowledge of the account in Geneva that bears his name." The article therefore indicates that *Le Monde* directly contacted me, which is not the case, and it implies I was untruthful when I denied having an account with HSBC. A true and correct copy of the article is attached hereto as Exhibit 4.

17. On that same day, in its print edition, *Le Monde* published a French-language companion piece that was entitled, "HSBC The Kings of Evasion." This article is largely identical to the articles that appeared online on February 8, 2015 (Exhibits 1 and 2) and includes the same statement about me that appeared in the February 8 online article. A true and correct copy of the article is attached hereto as Exhibit 5.

The 60 Minutes' Segment Does Not Identify Me as an Account Holder

18. On February 8, 2015, *60 Minute* also ran a segment, which is entitled "The Swiss Leaks" and covers the same general subject as the *Le Monde* article. While certain persons are mentioned by name, I am not one of them. A true and correct copy of a transcript of the segment is attached hereto as Exhibit 6.

19. According to the *60 Minutes* transcript, it was "the only U.S. news organization included" in the international group that helped to investigate the HSBC data for *Le Monde*. The transcript also quotes Serge Michel, an editor of *Le Monde*, about how the investigation was carried out: "*Le Monde* can deal with 3,000 French names, but it

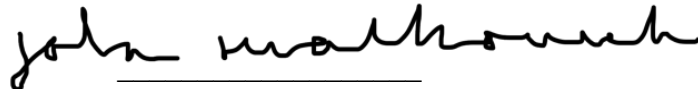
cannot deal with 120,000 names all around the world. We understood, it's too big for us and we can't have *Le Monde* reporters working on Italian, Greeks, Chinese, American names."

As with the statements in the *Le Monde* articles, these comments suggest that CBS was working with the Le Monde Defendants.

20. Because CBS can provide relevant testimony for my case against the Le Monde Defendants, I respectfully request that this Court grant my application for a subpoena pursuant to 28 U.S.C. § 1782.

Dated: May 20, 2015

Cambridge, Massachusetts



John Malkovich